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211 U.S. 78, November 1908

Mooney v. Holohan, 55 S. Ct. 340, 294
January 1935

Grosjean v. American, 56 S. Ct. 444,
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Mercer v. Theriot, 84 S. Ct. 1157, 377 U. S. 152, June 1964 — 7, 9, 12

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SUPREME COURT OF THE UNITED STATES

LEONARD J. La HITTE
Plaintiff Appellant
VERSUS
AMERICAN EMPLOYERS INSURANCE COMPANY
Defendants Appellee

PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE STATE OF LOUISIANA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Louisiana entered in the above entitled cause on February 3, 1967.

OPINIONS BELOW

This cause was heard by the Civil District Court for the Parish of Orleans, State of Louisiana, Division E, on the 23 rd. day of February, 1966. Judgment rejecting the demands of plaintiff was entered by said Court. Plaintiff being aggrieved by said judgment appealed said judgment to the Court of Appeals, Fourth Circuit, State of Louisiana, No. 3246, which Court, on November 7, 1966 affirmed the judgment of the lower court in part, and reversed in part, the

Gideon v. Wainwright, 83 S. Ct. 792, 37
March 1963

Basham v. Pennsylvania, 83 S. Ct. 965,
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Betts v. Brady, 316 U. S. 455, 62 S. Ct. 1

IN THE

SUPREME COURT OF THE UNITED STATES

NO. _____

MARIE LaHITTE, wife of/and
LEONARD J. La HITTE
Plaintiff Appellant

VERSUS

ACME REFRIGERATION SUPPLIES, INC., AND
AMERICAN EMPLOYERS INSURANCE COMPANY
Defendants Appellee

PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE STATE OF LOUISIANA

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PETITION FOR

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Fourth Circuit, State of Louisiana,
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judgment of the lower Court. An application for writs of certiorari to the Fourth Circuit Court of Appeal were requested of the Supreme Court of the State of Louisiana, who, on February 3, 1967 refused said application for a writ of certiorari.

JURISDICTION

Jurisdiction of this Court is envoked under 28 U. S. C., Section 1254.

QUESTIONS PRESENTED

That Article VII, Section 29 of the Constitution of the State of Louisiana which authorizes appellate review of factual findings of the jury in a civil action, is in violation of the Bill of Rights, particularly the Seventh Amendment to the Constitution of the United States of America, which guarantees to all citizens of the United States of America the right to a trial by jury and that no fact tried by jury, shall be otherwise re-examined in any Court of the United States

STATUTES INVOLVED

Constitution of the United States of America, Section I of the Fourteenth Amendment to the United States Constitution declares;

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the priviliges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article VII of the Bill of Rights of the Constitution of the United States provides:

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined by an Court of the United States, than according to the rules of the common law."

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STATEMENT

Plaintiffs aver that they have been deprived of their right to a trial by jury as guaranteed to them by the Seventh Amendment to the Constitution of the United States which provides for the preservation of trial by jury and further provides that no fact tried by jury shall be otherwise re-examined by any Court of the United States, than according to the rules of the common law.

Here, we have an appellate Court of the State of Louisiana usurping the duties of the jury in reviewing the facts as presented, and finally, making a determination of said facts, stating in its opinion, made a part of this application and marked as Appendix I, Page 12 as follows;

> "Plaintiffs complain of the refusal of the trial judge to give certain special charges and of certain allegedly erroneous charges which were given to the jury. Without discussing the merit of plaintiffs' contention, we must observe that had the jury found as a fact that plaintiffs' driver was not negligent, whether such finding was based on proper or erroneous charges, we, as judges of the fact as well as the law, would have been compelled to hold that manifest error had been committed."

We have stated in the portion of the opinion quoted above the position taken by the appellate Courts of the State of Louisiana in regard to fact findings of jurys, that said fact findings are merely directory and need not be followed by the appellate courts and in fact, may, if it so chooses, substitute its finding of fact for that of the jury's.

In the instant cause the appellate courts of the State of Louisiana went even farther than merely substituting their findings of fact for those of the jury. For in this cause, the jury did not consider the crucial question regarding the negligence of the defendant driver, and the appellate Court

Plaintiffs aver that they have been

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regarding the negligence of the defen

Page 3

when it noted this fact, instead of remanding this cause for a trial by jury as demanded by the plaintiffs, made a factual determination as if it were a trier of fact, stating on page 12 of its opinion as follows;

> "Because of its failure to pass on the reconventional demand, it is impossible to determine with any degree of certainty just what the jury did find on the issue of Dawson's negligence. Any finding other than the conclusion we have reached, that Dawson was free of negligence, would likewise be manifestly erroneous and reversible under the facts presented by the record before us."

The plaintiffs in the instant cause demand a trial by jury as guaranteed to them by the Constitution of the United States of America.

The question of the constitutionality of Article VII, Section 29 of the Constitution of the State of Louisiana which provides for appellate review of facts has yet to be refused by this Honorable Court.

That the question regarding the constitutionality of Article VII, Section 29, of the Constitution of the State of Louisiana as it violates the Seventh Amendment of the Constitution of the United States is presently being considered by a three judge court which has been convened as provided for under 28 USCA 2284 in the matter entitled "Mrs. Edith Hill versus The Honorable John J. McKeithen, individually, and in his capacity as Governor of the State of Louisiana, et al, in the United States District Court, Eastern District of Louisiana, Baton Rouge Division, Civil Action No. 6720.

The specially constituted three judge Court has heard arguments, has received a brief from numerous law firms throughout the State of Louisiana and is presently considering the merits of the plaintiff's demands.

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The issues in the instant cause are identical to those presently under consideration by the specially constituted three judge Court in the United States District Court, Eastern District of Louisiana, Baton Rouge Division.

The learned Arthur Cobb of the Baton Rouge Bar, in this memorandum to the Court, presented a clear and concise picture of the jurisprudence of this Honorable Court and of the Courts of the State of Louisiana, which shows beyond question the merit of this cause and we therefore have taken the liberty of quoting from said memorandum the following;

The Supreme Court of the United States in Gideon v. Wainwright, 83 S. CT. 792 stated:

> "Those guarantees of the Bill of Rights which are fundamental safeguards of liberty immune from federal abridgment are equally protected against state invasion by the Due Process Clause of the Fourteenth Amendment."

On Page 795 of the Gideon decision of the Supreme Court of the United States stated:

> "Explicitly recognized to be of this "fundamental nature" and therefore made immune from state invasion by the Fourteenth, or some part of it, are the First Amendment's freedoms of speech, press, religion, assembly, association, and petition for redress of grievances. For the same reason, though not always in precisely the same terminology, the Court has made obligatory on the States the Fifth Amendment's command that private property shall not be taken for public use without just compensation, the Fourth Amendment's prohibition of unreasonable searches and seizures, and the Eighth's ban on cruel and unusual punishment."

The court further stated that a provision of the Bill of Rights which is "fundamental and essential" to a fair trial is made obligatory upon the States by the Fourteenth Amendment. The question here is whether or not the rights guaranteed by the Seventh Amendment are "fundamental and

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and essential". The court in the Gideon case quoted from Grosjean v. American Press Co., 297 U.S. 233, 243-244 56 S. Ct. 444, 446, 80 L. Ed. 660 (1936), as follows:

> "We conclude that certain fundamental rights, safeguarded by the first eight amendments against federal action, were also safeguarded against state action by the due process clause of the Fourteenth Amendment, and among them the fundamental right of the accused to the aid of counsel in a criminal prosecution." (Emphasis supplied).

In reversing and casting out the old landmark case of Betts v. Brady, 316 U.S. 455, 62 S. Ct. 1252, 86 L. Ed. 1595, the Supreme Court of the United States stated:

> "In returning to these old precedents, sounder we believe than the new, we but restore constitutional principles established to achieve a fair system of justice."

Article VII of the Bill of Rights of the United States Constitution provides:

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved and no fact tried by a jury shall be otherwise re-examined by any Court of the United States, than according to the rules of the common law."

Section 1 of the Fourteenth Amendment to the United States Constitution declares:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Justice Black, as the organ of the Court in the Gideon case, pointed out that the guarantees of the Bill of Rights, which are fundamental safeguards

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Justice Black, as the organ of the Court

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of liberty, immune from federal abridgement, are equally protected against state invasion by the Due Process Clause of the Fourteenth Amendment. He declared that the freedoms of speech, press, religion, assembly, association, petition for redress of grievances, the command that private property shall not be taken for public use without just compensation, the prohibition of unreasonable searches and seizures, the ban on cruel and unusual punishment, and the right of all defendants in criminal prosecution to assistance of counsel for their defense, are explicitly recognized to be of this "fundamental nature" and, therefore, made immune from state invasion by the Fourteenth Amendment.

Petitioners rely on the following United States Supreme Court cases:

Twining v. State of New Jersey, 29 S. Ct. 14, 211 U.S. 78, November 1908

Mooney v. Holohan, 55 S. Ct. 340, 294, U. S. 103, January 1935

Grosjean v. American, 56 S. Ct. 444, 297 U. S. 233, February 1936

Smith v. O'Grady, 61 S. Ct. 572, 312 U. S. 233, February 1936.

Testa v. Katt, 67 S. Ct. 810, 330 U. S. 386, March, 1947

Mapp v. Ohio, 81 S. Ct. 1684, 367 U. S. 643, October 1961

Robinson v. State of California, 82 S. Ct. 1417, 370 U. S. 660, June 1962

Gideon v. Wainwright, 83 S. Ct. 792, 372 U. S. 335, March 1963

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Robinson v. State of California
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Gideon v. Wainwright, 83 S. Ct.
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Basham v. Pennsylvania, 835.
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Mercer v. Theriot, 84 S. Ct. 1157, 377 U. S. 152, June 1964

Turner v. State of Louisiana, 85 S. Ct. 546, 379 U. S. 466, January 1965.

Pointer v. State of Texas, 85 S. Ct. 1065, 380 U. S. 400, April 1965.

Miranda v. State of Arizona 85 S. Ct. 1602, June 1966.

Estes v. State of Texas, 85 S. Ct. 1628, 381 U. S. 532, October 1965.

In 1908 in Twining the Supreme Court stated, It is possible that some of the personal rights safeguarded by the first Eight Amendments against national action may also be safeguarded against state action because a denial of them would be a denial of due process of law."

In 1935 in Mooney the Supreme Court stated that the obligation to guard and enforce every right secured by Federal Constitution rests on state courts equally with federal courts.

In 1936 in Grosjean the Supreme Court states that certain fundamental rights, safeguarded by the first eight amendments against federal action, were also safeguarded against state action by the due process clause of the Fourteenth Amendment.

In 1941 in Smith v. O'Grady, the Supreme Court Stated that the Federal Constitution is the "supreme law of the land", and the obligation to guard and enforce every right secured by that constitution rests on the state courts equally with the federal courts.

Mercer v. Theriot, 84 S. Ct. [illegible]
June 1964

Turner v. State of Louisiana, 8[illegible]
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Pointer v. State of Texas, 85 S.[illegible]
April 1965.

Miranda v. State of Arizona 85 S[illegible]

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Fourteenth Amendment.

In 1941 in Smith v. O'Grady, the Supreme [illegible]
Constitution is the "supreme law of the la[illegible]
and enforce every right secured by that c[illegible]
equally with the federal courts.

In 1947 in Testa the Supreme Court stated that the United States Constitution and the laws passed pursuant to it are the supreme laws of the land, binding alike upon states, courts, and the people , anything in the constitution or laws of any state to the contrary notwithstanding.

In 1961 in Mapp the Supreme Court states that the Fourth Amendment's right of privacy is enforceable against the states through the Due Process Clause of the Fourteenth Amendment, since this is a freedom "implicit in the concept of ordered liberty."

In 1962 in Robinson the Supreme Court held that the Eighth Amendment's prohibition on cruel and unusual punishment is applicable to the states.

In March 1963 in Gideon the Supreme Court stated that where provision of the Bill of Rights of the Federal Constitution is fundamental and essential to a fair trial, then it is made obligatory on the states through the Fourteenth Amendment.

In April 1963 in Basham the Supreme Court reinstated a jury judgment predicated on very slight evidence. Mr. Justice Harlan in his dissent stated that the majority opinion held that "anything a jury says goes".

In 1964 in Mercer the Supreme Court reversed the Court of Appeals and allowed the verdict of a civil jury to stand even though the case was based completely on circumstantial evidence when the Fifth Circuit of Appeals had felt that the defendant was convicted on "rumor and hearsay".

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In January 1965 in Turner, a Louisiana case that went to the Supreme Court of the United States, wherein the Supreme Court held that a right to a jury trial in a criminal case in Louisiana guarantees that there will be a fair jury trial by a panel of impartial and indifferent jurors and that the State of Louisiana had failed to accord the accused a fair jury trial and that this violated the minimal standard of due process under the Fourteenth Amendment of the Constitution of the United States and that a fair trial in a fair tribunal is a basic requirement of due process under the Fourteenth Amendment to the Constitution of the United States.

In April 1965 in Pointer the Supreme Court held that the Fifth Amendment's guarantee against self incrimination is made applicable to the states through the Fourteenth Amendment. The court also held that the Sixth Amendment's right of an accused to be confronted with witnesses against him is a fundamental right and is made obligatory on the states through the Fourteenth Amendment. The court went further to say that a state denying these fundamental rights amounts to a denial of the Fourteenth Amendment's guarantee of due process of law. Mr. Justice Black went so far as to state:

> "The fact that this right appears in the Sixth Amendment of our Bill of Rights reflects the belief of the Framers of those liberties and safeguards that confrontation was a fundamental right essential to a fair trial in a criminal prosecution."

In October 1965 in Estes the Chief Justice of the Supreme Court of the United States in his concurrent opinion, answering the trial judge's remarks that the case was not being tried under the federal constitution but under the State laws and constitution, declared:

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In October 1965 in Estes the Chief Just

States in his concurrent opinion, answe

the case was not being tried under the

laws and constitution, declared:

"I find it difficult to believe that this trial judge, with over 20 years experience on the bench, was unfamiliar with the fundamental duty imposed on him by Article VI of the Constitution of the United States:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme law of the Land; and the Judges in every state shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding."

In 1966 in Miranda the Supreme Court stated that there were rights secured by Constitution of the United States are involved, there can be no rule making or legislation which would abrogate them by the states. In a preferential appearance of the right in the Bill of Rights reflects a belief by the framers that those liberties and safeguards that were most fundamental be placed first, then the framers of the Constitution of the United States believed that the rights guaranteed by the Seventh Amendment to the Constitution were more fundamental than the immunities guaranteed by the Eighth Amendment. The Supreme Court of the United States has already held in the Robinson case that the Eighth Amendment does apply to the States through the Due Process Clause of the Fourteenth Amendment. In fact, Mr. Justice Goldberg in his concurring opinion in the Pointer case made it amply clear that he believed the same as Mr. Justice Black, that the guarantees of the first eight amendments of the Constitution of the United States are incorporated through the Due Process Clause of the Fourteenth Amendment and therefore obligatory on the States.

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Amendment and therefore obligatory on the

The Supreme Court has held in Mercer v. Theriot, and in the Basham case, that what the jury says goes as long as there is a fair trial. The right to trial by jury is considered by the Supreme Court to be a fundamental right essential to ordered liberty. The rights guaranteed by the Seventh Amendment are basic and fundamental rights guaranteed by the Bill of Rights and are applicable to the States.

The anti-Fourteenth Amendment cases stacked up on Walker v. Sauvinet were felled along with Betts v. Brady by Gideon and Pointer.

The United States Constitution is the supreme law of the land, binding alike upon states, courts and the people, anything in the constitution or laws of any state to the contrary notwithstanding.

Testa v. Katt, 330 U. S. 386, 391, 67 S. Ct., 810, 813. The obligation to guard and enforce every right secured by that constitution rests upon the state courts equally with the federal courts. Mooney v. Holohan, 294 U.S. 103, 113, 55 S. Ct. 340, 342; Smith v. O'Grady, 312 U. S. 329, 331, 61 S. Ct. 572, 573.

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the state courts equally with the federal court

294 U.S. 103, 113, 55 S. Ct. 340, 342; Smith v

331, 61 S. Ct. 572, 578.

REASONS FOR GRANTING THIS WRIT

It is respectfully submitted that this Court, regardless of the position taken by the three judge court in the matter presently pending in the United States District Court, Eastern District of Louisiana, Baton Rouge Division, must make a determination of the issues presented in this cause, and therefore, it is respectfully suggested that this instant matter be held in abeyance by this Honorable Court pending the receipt of that cause presently pending in the United States District Court, Eastern District of Louisiana, Baton Rouge Division, or, in the alternative, that this Honorable Court consider the issues as presented by applicant and declare those acts of the State of Louisiana that are in conflict with the Seventh Amendment of the Constitution of the United States be declared invalid in order that the citizens of this State of Louisiana be granted their right to a real and full trial by jury.

Petitioner is of the opinion that they have exhausted every legal means short of this petition for certiorari.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully Submitted

Frank S. Bruno
1115 Richards Building
New Orleans, Louisiana

REASONS FOR GRANTING T

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For the foregoing reasons this petition for a w

granted.

Re

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No

CERTIFICATE

I certify that I have served a copy of the foregoing petition for Certiorari upon F. Lozes of Drury and Lozes, Attorneys for defendants, by depositing the same in a United States Post Office with First Class Mail postage prepaid addressed to them in the National Bank of Commerce Building, New Orleans on this the 2nd. day of May, 1967.

Frank S. Bruno

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

NUMBER 152

LaHITTE, ET VIR

VS

ACME REFRIGERATION SUPPLIES INC., ET AL

Petition for Rehearing
of Order Denying
Petition for Writ of Certiorari

Your petitioners pray that this Court grant a rehearing of its order of October 9, 1967, denying the Petition for Writ of Certiorari, _____ US _____, and a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of Louisiana, as prayed for in the original petition praying for a Writ of Certiorari.

REASONS FOR GRANTING REHEARING AND ISSUING A WRIT OF CERTIORARI

The basic issue here is whether or not it is a violation of the Seventh Amendment of the United States Constitution for an appellate judge to deny a litigant a trial by jury when the State constitution of that state specifically authorizes a trial by jury (Article 7, Section 41 of the Louisiana Constitution).

Pursuant to Article 7, Section 41 of the Louisiana Constitution, a litigant has been accorded the right of trial by jury in civil matters. But this right of trial by jury is constantly usurped by the appellate structure of the State of Louisiana. As in the instant case, the appellate judges who do not see or hear the witnesses or bear through the trial are substituting their opinions of fact for what might have been or could have been the facts.

The framers of the Louisiana Constitution gave a mandate to the Legislature of Louisiana to institute a trial by jury. The Louisiana Constitution, Article 7, Section 41, provides:

> "The Legislature shall provide for the election and drawing of competent and intelligent jurors for the trial of civil and criminal cases ...." (Emphasis supplied)

The Louisiana Constitutional provision affording a litigant a trial by jury is in accord with the United States Constitution and the fundamental rights provided therein; but the Louisiana Constitution also has a provision of appellate review of facts (Article 7, Section 29) which is not in accord with the United States Constitution, and contraiwise is in violation of the Seventh Amendment to the United States Constitution. These petitioners are asking the United States Supreme Court to hold that through the Supremacy Clause of the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment of the United States Constitution, that the Seventh Amendment of the United States Constitution invalidates and voids Article 7, Section 29 of the Louisiana Constitution and any other Louisiana statute violating the petitioners' right to a real trial by jury.

As was noted by the U. S. Supreme Court in Turner v. State of Louisiana (1965) 379 US 466, 85 S Ct 1157, the State of Louisiana had granted a trial by jury in criminal matters, and once granted it had to be a real right:

> "This case does not involve the question whether the Fourteenth Amendment requires a state to accord a jury trial to a defendant charged with murder. The question, rather, goes to the nature

> of a jury trial which the Fourteenth Amendment commands when trial by jury is what the state has purported to accord.
> ...
>
> The requirement that a jury's verdict must be based upon the evidence developed at the trial goes to the fundamental integrity of all that is embraced in the constitutional concept of trial by jury. 'The jury is an essential instrumentality — an appendage — of the court, the body ordained to pass upon guilt or innocence...."
> (Emphasis supplied)

The State of Louisiana has granted to litigants the right of a trial by jury, but because of the provisions allowing an appellate review of facts a trial by jury in Louisiana is but a sham, all in violation of the Seventh Amendment of the United States Constitution.

Historically and traditionally, the citizens of Louisiana had been accorded rights as citizens of the United States as far back as the Treaty of Paris, 30 April 1803, wherein the Louisiana Purchase was accomplished. Article 3d of that Treaty provided:

> "The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess." Treaty of Paris, April 1803, West's LSA Constitution of Louisiana, Volume 3, page 486.(Emphasis supplied)

The right to a trial by jury in civil cases was first recognized and accorded to citizens of Louisiana by the Federal Congress in an act of March 26, 1804, c. 38, 2 US Stat. 283, "An Act erecting Louisiana into two territories and providing for the temporary government thereof." Section 5 of that Act, provided:

> "In all criminal prosecutions which are capital, the trial shall be by a jury of 12 good and lawful men of the vicinage; and in all cases, criminal and civil, in the superior court, the trial shall be by a jury, if either of the parties require it ...."

In a subsequent Act of Congress for March 26, 1804, the Federal Congress gave powers to the Legislature of the Territory of Louisiana, that held in Section 4:

> "...The governor, by and with the advice and consent of the said legislative council, or of a majority of them, shall have power to alter, modify or repeal the laws which may be in force at the commencment of this act. Their lesiglative powers shall also extend to all the rightful subjects of legislation; but no law shall be valid which is inconsistent with the constitution and laws of United States...." (Emphasis supplied)

And when Louisiana was admitted to the Union as a state, the Admitting Act of 1812 demanded:

> "...and that the above condition, and also all other the conditions and terms contained in the third section of the act, the title whereof is hereinbefore cited, shall be considered, deemed and taken, fundamental conditions and terms, upon which the said state is incoporated in the Union..."

CONCLUSION

The petitioners submit that in the original petition and this petition for a rehearing, it has been shown that the instant matter should be remanded back to the trial court for a real trial by jury. The petitioners are asking for no new rights. Instead, the petitioners pray that their rights as originally recognized by both the state and federal constitution be accorded to the petitioners.

WHEREFORE, for the reasons set forth above and in the Petition for Writ of Certiorari, it is respectfully urged that a rehearing be granted and that the Court withdraw its order of October 9, 1967, refusing the Petition for Writ of Certiorari herein, and that the Court issue a Writ of Certiorari to the Supreme Court of the State of Louisiana.

Respectfully submitted,

FRANK S. BRUNO
Hibernia Bank Building
New Orleans, Louisiana 70112
AND
CHARLES R. MALONEY
822 Richards Building
New Orleans, Louisiana 70112
Telephone: 522-9039

BY: _____
CHARLES R. MALONEY

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

CHARLES R. MALONEY

PROOF OF SERVICE

I, Charles R. Maloney, attorney for the petitioners, and a member of the Bar of the Supreme Court of the United States, hereby certify that on this day I served a copy of the foregoing Petition for Rehearing on Mr. F. Lozes, of Messrs. Drury and Lozes, by mailing a copy of the same to their office at the National Bank of Commerce Building, New Orleans, Louisiana, on this day, November _____, 1967.

CHARLES R. MALONEY